No. 80-740

In the Supreme Court of the United States

OCTOBER TERM, 1980

JAMES DONALD ECKMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSTION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner, along with co-defendants Howard Blum and Peter Machi, was convicted by a jury in the United States District Court for the Western District of Pennsylvania of conspiracy to rob an armored car carrying bank funds, in violation of 18 U.S.C. 371 and 2113(b), and of unlawfully carrying firearms in the course of the conspiracy, in violation of 18 U.S.C. 924(c). He was sentenced to a total term of eight years' imprisonment. The court of appeals affirmed (Pet. App. 1a-3a).

Petitioner contends (Pet. 24-34) that the district court erred in refusing to suppress guns discovered during a warrantless search of a duffle bag found in a stolen vehicle seized by the FBI, in conducting an *in camera* proceeding relating to disclosure of the address of an informant, and in concluding that the government should not be required to disclose the address. These claims are without merit for the

reasons stated in our Brief in Opposition to co-defendants Blum's and Machi's petitions for a writ of certiorari (Nos. 80-5484 and 80-5491).[1]

In addition to those authorities relied on by Blum and Machi, petitioner contends that the court of appeals' decision conflicts with *United States* v. *Godkins*, 527 F. 2d 1321 (5th Cir. 1976) (Pet. 28-29), and with *United States* v. *Benson*, No. 80-1044 (8th Cir. Sept. 18, 1980) (Pet. 34). These cases, however, are inapposite here. In *Godkins*, the court ruled that the trial court had erred in prohibiting the defense from subpoenaing a witness to testify at trial because the defendant's Sixth Amendment right to call witnesses in his own behalf was violated. The court did not suggest that the government was required to assist in producing the witness at trial, as is the claim here. Indeed, the court drew a sharp distinction between denying information to the defendant that would enable him to subpoena a witness, which does not violate the Sixth Amendment, and denying the defendant the right to subpoena a witness based on information already known to him. 527 F. 2d at 1326. Moreover, the need for the informant's testimony was much greater than here because the defendant in *Godkins* was asserting an entrapment defense. In *Benson*, the bag in question had not been seized from a stolen car; thus, unlike here, the defendant retained a legitimate expectation of privacy in the bag.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1980

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[1]A copy of that filing has been sent to petitioner.

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